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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ABDUL HOWARD,
8 Plaintiff,
9 v.
10 CLARK COUNTY, et al.,
11 Defendants.

Case No. 2:16-cv-02318-RFB-VCF

SCREENING ORDER
ON SECOND AMENDED
COMPLAINT

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13 Plaintiff, who is a prisoner in the custody of the Clark County Detention Center
14 ("CCDC"), has submitted a second amended civil rights complaint pursuant to 42 U.S.C.
15 § 1983, and a motion for reconsideration. (ECF Nos. 11, 14.) The Court now screens
16 Plaintiff's second amended civil rights complaint pursuant to 28 U.S.C. § 1915A and
17 addresses Plaintiff's motion.

18 **I. SCREENING STANDARD**

19 Federal courts must conduct a preliminary screening in any case in which a
20 prisoner seeks redress from a governmental entity or officer or employee of a
21 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any
22 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
23 upon which relief may be granted or seek monetary relief from a defendant who is immune
24 from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be
25 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).
26 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
27 (1) the violation of a right secured by the Constitution or laws of the United States, and
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1 (2) that the alleged violation was committed by a person acting under color of state law.
2 See *West v. Atkins*, 487 U.S. 42, 48 (1988).

3 In addition to the screening requirements under § 1915A, pursuant to the Prison
4 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the
5 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a
6 claim on which relief may be granted, or seeks monetary relief against a defendant who
7 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
8 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
9 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
10 reviewing the adequacy of a complaint or an amended complaint. When a court
11 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
12 complaint with directions as to curing its deficiencies, unless it is clear from the face of
13 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*
14 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
16 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
17 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
18 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
19 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
20 allegations of material fact stated in the complaint, and the court construes them in the
21 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
22 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
23 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
24 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
25 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
26 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
27 insufficient. *Id.*

1 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
2 that, because they are no more than mere conclusions, are not entitled to the assumption
3 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can
4 provide the framework of a complaint, they must be supported with factual allegations.”
5 *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity
6 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*
7 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
8 specific task that requires the reviewing court to draw on its judicial experience and
9 common sense.” *Id.*

10 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
11 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
12 includes claims based on legal conclusions that are untenable (e.g., claims against
13 defendants who are immune from suit or claims of infringement of a legal interest which
14 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
15 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
16 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

17 **II. PROCEDURAL HISTORY**

18 On October 11, 2017, this Court screened Plaintiff’s first amended complaint. (See
19 ECF No. 6.) Plaintiff sued multiple defendants for events that took place while Plaintiff
20 was incarcerated at the CCDC. (ECF No. 7.) Plaintiff asserted three counts against
21 Defendants Clark County, Sletten Construction, Sheriff Lombardo, Las Vegas
22 Metropolitan Police Department Detention Service Division, Clark County Detention
23 Center, and John Doe owner of CCDC. (*Id.* at 1-2.) The Court granted Plaintiff leave to
24 amend his complaint as follows: (1) in Count I, Plaintiff was given leave to amend an
25 Eighth Amendment deliberate indifference claim; (2) in Count II, Plaintiff was given leave
26 to amend a Fourteenth Amendment access to courts claim and a Fourth Amendment
27 claim related to excessive strip searches; and (3) in Count III, Plaintiff was given leave to
28 amend an Eighth Amendment conditions of confinement claim as to Defendants Doe,

1 Lombardo, Clark County, and Sletten Construction. (ECF No. 6.) The Court dismissed,
2 with prejudice, Defendants Las Vegas Metropolitan Police Department Detention Service
3 Division (“LVMPDDSD”) and Clark County Detention Center. (*Id.* at 13.)

4 **III. SCREENING OF SECOND AMENDED COMPLAINT**

5 The Court has thoroughly reviewed Plaintiff’s second amended complaint and finds
6 that Counts I and II are identical to his Count I and II claims in his first amended complaint.
7 (*Compare* ECF No. 7 at 3-7 *with* ECF No. 14 at 3-7.) As to Count III, Plaintiff does provide
8 additional detail, but he fails to properly amend the claim as directed in the original
9 screening order. (*Compare* ECF No. 7 at 8-9 *with* ECF No. 14 at 8-10.)

10 Further, in the first amended complaint, Plaintiff had a Count IV claim titled
11 “Municipality” (See ECF No. 7 at 11.) The Court did not analyze this Count as it contained
12 no factual allegations, but instead recited case law related to suing a municipality. (See
13 *id.*) In his second amended complaint, Plaintiff includes the same Count IV Municipality
14 page, but also adds an additional page of factual allegations. (See ECF No. 14 at 12-
15 13.) Plaintiff adds additional details to his excessive strip search claim, access to courts
16 claim, and conditions of confinement claim. (*Id.* at 13.) However, this additional detail
17 fails to properly amend the claims as directed in the original screening order and instead
18 re-alleges what is contained in Counts II and III.

19 Because Plaintiff was given an opportunity to amend these Counts, but failed to
20 do so, Counts I, II, III, and IV are dismissed, with prejudice, as amendment would be futile.
21 The Court will now address Plaintiff’s Count V claim.

22 In Count V, Plaintiff alleges that Defendant Las Vegas Metropolitan Police
23 Department Detention Service Division violated Plaintiff’s right to access courts. (*Id.* at
24 14-15.) However, Defendant LVMDDSD was dismissed, with prejudice, from this action
25 in the Court’s prior screening order. (See ECF No. 6 at 13.) Accordingly, Count V is
26 dismissed, with prejudice, as amendment would be futile.

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On November 27, 2017, Plaintiff filed a motion for reconsideration of this Court's screening order on Plaintiff's amended complaint. (ECF No. 11.) In light of the filing of Plaintiff's second amended complaint (ECF No. 14) and the present screening order, Plaintiff's motion for reconsideration (ECF No. 11) is denied as moot.

For the foregoing reasons, **IT IS ORDERED** that Plaintiff's second amended complaint (ECF No. 14) is the operative complaint in this case.

IT IS FURTHER ORDERED that the second amended complaint (ECF No. 14) is dismissed in its entirety, with prejudice, as amendment would be futile.

IT IS FURTHER ORDERED that Plaintiff's motion for reconsideration (ECF No. 11) is denied as moot.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly.

DATED this 22nd day of December 2017.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE